IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No. 191 of 2000
With
COMPANY APPLICATION No. 423 of 2005
With
COMPANY APPLICATION No. 1 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BHAGYALAXMI TRADE CORPORATION - Petitioner(s)
Versus
NEWTON ENGINEERING & CONSTRUC-TION PVT. LTD. - Respondent(s)

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Appearance :
MR MTM HAKIM for Petitioner(s) : 1,
MRS SWATI SOPARKAR for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 13/04/2006

COMMON ORAL JUDGMENT

1. Present petitioner Bhagyalaxmi Trade Corporation has filed the present petition under sections 433 and 434 of the Companies Act, 1956, seeking an order of winding

up of M/s. Newton Engineering and Construction Pvt.Ltd. It appears that some reply was filed and particular facts were suppressed from the Court, however, it lateron came to the notice of the present petitioner that Newton Engineering & Construction Pvt.Ltd. submitted Company Petition No. 217 of 1997 with a prayer that Newton Engineering & Construction Pvt.Ltd. be merged and amalgamated with the Newton Engineering Chemicals Ltd. This Court, vide its order dated 5.9.2000 allowed the scheme and amalgamation. The effect of the same was that M/s. Newton Engineering & Construction Company Pvt. Ltd., did not exist, it stood merged in Newton Engineering & Chemicals Ltd. These facts were brought to the notice of the Court in yet another Company Petition No. 29 of 2002 filed at the instance of Shreege & Company Vs. Newton Engineering & Chemicals Ltd. On 24.8.2005, this Court observed that immediately on passing of the order on 5.9.2000 in Company Petition No. 217/97, Newton Engineering and Construction Pvt. Ltd. merged with the Newton Engineering & Chemicals Ltd, the company namely, Newton Engineering & Construction Pvt. Ltd., therefore, would no longer exist, its name be struck off from the records of the Registrar of Companies without it being

wound up. The Court observed that there is no necessity to pass winding up order in Company Petition No. 191 of 2000. After the said order was passed, the present petitioner filed Company Application No.455 of 2003 seeking impleadment of Newton Engineering & Chemicals Ltd. and also filed Company Application No. 1 of 2006 seeking certain amendments in the pleadings.

2. Mr.Hakim, learned counsel for the petitioner submits that if M/s. Newton Engineering & Construction Ltd's, is substituted by Newton Engineering & Chemicals Ltd., then, he can still maintain this petition against M/s. Newton Engineering & Chemicals Ltd.

3. In the opinion of this Court, in light of the order dated 24.8.2005, no order of winding up against the Newton Engineering Construction Pvt.Ltd. can be passed. By the said order, dated 24.8.2005, Company Petition No. 191 of 2000 has been made infructuous. In such company petition, neither a party can be substituted nor amendment can be allowed. As Company Petition No. 191 of 2000 has become infructuous, no orders on Company Application No. 423 of 2005 and Company Application No. 1 of 2006 can be passed. These applications are rejected for the reasons aforesaid. Company Application No. 191 of 2000 is also dismissed.

However, the petitioner would be at liberty to file Company Petition against Newton Engineering & Chemicals Ltd., in view of the merger of Newton Engineering & Construction Pvt.Ltd., into the new company. He would also be entitled to take benefit of the time spent in this proceeding. The records of the Company Application Nos. 1 of 2006 and 423 of 2005 and Company Petition No. 191 of 2000 be separated from the records of the Company Petition No. 29 of 2002.

[R.S. GARG, J.]

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